In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 301

ABRAHAM TEITELBAUM, PETITIONER

v.

UNITED STATES OF AMERICA

ABRAHAM TEITELBAUM, PETITIONER

v.

EUGENE C. COYLE, JR., and HON. MORTIMER J. CAPLIN

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

These cases involve assessments for income tax, penalties, and interest against the taxpayer for the years 1949, 1950 and 1951. Petitioner's tax liability for those years was determined by the Tax Court of the United States (Pet. 28-29). The Tax Court's

memorandum opinion (P-H Memo T.C., par. 60,011) was affirmed by the United States Court of Appeals for the Seventh Circuit (294 F. 2d 541), and the taxpayer's petitions for certiorari and for rehearing were denied by this Court (368 U.S. 987 and 369 U.S. 842). The Tax Court decision thus became a final determination of the taxpayer's liability for the years 1949, 1950 and 1951.

The instant petition covers two cases which had been consolidated for purposes of appeal; both concern the petitioner's tax liability for 1949-1951. In *United States* v. *Abraham Teitelbaum*, the government brought a timely suit in the United States District Court for the Northern District of Illinois to reduce to judgment the petitioner's unpaid tax liabilities for 1949-1951 as determined by the Tax Court. This action was necessitated by the fact that the tax deficiencies for the years involved had not been paid or administratively collected, and the Tax Court lacks the power to order executions to issue on its decisions. Section 276(c) of the Internal Revenue Code of 1939 and Section 7402(a) of the Internal Revenue Code of 1954 contemplate the use of judicial proceedings in the district courts to collect tax deficiencies which have not been collected administratively; the government's timely collection suit in the instant case falls squarely within these provisions. At the trial in the district court, the government introduced supporting affidavits as to the amounts of petitioner's unpaid tax liabilities for the years in question and moved for summary judgment. The district court granted the government's motion as to the years 1949, 1950 and 1951

(Pet. 24).[1] The court of appeals affirmed (Pet. 20, 22). This decision was correct, since the taxpayer's liability for the tax deficiencies for these years had already been fully litigated in the Tax Court and affirmed on appeal. There were no material issues of fact remaining to be tried. *Commissioner* v. *Sunnen*, 333 U.S. 591.

In *Abraham Teitelbaum* v. *Eugene C. Coyle, Jr., and Mortimer J. Caplin* taxpayer initiated a suit in the same district court, ten days before the government's collection action was begun, to enjoin the District Director and the then Commissioner of Internal Revenue from collecting the 1949, 1950 and 1951 deficiencies. Taxpayer also sought, in effect, a decree holding invalid the deficiency assessments against him (Pet. 22). The district court dismissed the action with prejudice (Pet. 25), and the court of appeals affirmed (Pet. 21-22). In addition to constituting a collateral attack on the prior Tax Court decision, this suit was barred by Section 7421(a) of the Internal Revenue Code of 1954 barring the courts from restraining the collection of a tax and by 28 U.S.C. 2201 barring the federal courts from granting declaratory judgments in tax cases.

Petitioner now argues that he made excessive payments on his pre-1949 tax liabilities and that these overpayments should be carried forward against his 1949-1951 liabilities here in question (Pet. 6, 8-10).

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[1] The government also sought summary judgment for deficiencies for the years 1958 and 1961; as to these years the district court refused to enter summary judgment and dismissed the government's complaint without prejudice (Pet. 19-20, 24).

In 1960 the Tax Court determined petitioner's liabilities for the years 1944-1947 and 1949-1951 (Pet. 26-29). Petitioner states that some time before 1960, the Commissioner made jeopardy assessments against him and he paid approximately $406,000 on his pre-1949 liabilities (Pet. 6, 8-10). Petitioner asserts that these payments exceeded his pre-1949 liabilities as ultimately determined by the Tax Court and that the excess payments should be applied against his 1949-1951 liabilities (Pet. 6, 8-10). The Commissioner has admitted that petitioner's payments on his pre-1949 tax liabilities exceeded the amount owing thereon by approximately $12,000; petitioner was given credit against his 1949-1951 tax liabilities for that amount (R. 3).[2] Petitioner's proof does not demonstrate any greater overpayment. His own evidence shows that the $406,000 was not paid exclusively on his own liabilities; those payments were also made toward the 1944-1948 tax liabilities of his former wife and of a corporation (The Tyted Co.), neither of whose pre-1949 tax liabilities are disclosed by the record (R. 26-29). Moreover, petitioner's evidence also shows that the $406,000 was paid not only on his 1944-1947 taxes (the amount of which the Tax Court has determined) but also were made toward his own 1948 tax liabilities, the amount of which is unlitigated and undisclosed by this record (R. 26-29). Finally, the Tax Court decisions for both the 1944-1947 and the 1949-1951 tax periods do not include the interest (at 6%

[2] "R" references are to petitioner's printed appendix in the court of appeals.

per year) that is statutorily added to all deficiencies up to the date of payment (§ 6601, Internal Revenue Code). It is therefore apparent that petitioner's offer of $406,000 in receipts did not create a triable issue of fact as to whether he overpaid his own pre-1949 tax liabilities by more than approximately $12,000, and the district court was correct in granting summary judgment for the government on the basis of the District Director's affidavit and schedule (App., *infra*, pp. 6-8).[3]

Taxpayer's petition for a writ of certiorari is, in substance, an attempt to relitigate his tax liability, although he has had ample opportunity to present any and all defenses available to him. Further review by this Court is unnecessary, and the petition for a writ of certiorari should, accordingly, be denied.

Respectfully submitted,

RALPH S. SPRITZER,
Acting Solicitor General.

JOHN B. JONES, JR.,
Acting Assistant Attorney General.

DAVID O. WALTER,
JONATHAN S. COHEN,
Attorneys.

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[3] Additionally, at our request the District Director of the Internal Revenue Service's Chicago office has reviewed his records and has accounted for the full $406,000 paid by petitioner. According to these records all but approximately $12,000 of the payments were applied to pre-1949 tax liabilities (and interest thereon) owed by petitioner, his former wife and his corporation. As stated in text petitioner was given credit for the approximately $12,000 overpayment.

APPENDIX

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

AFFIDAVIT

EUGENE C. COYLE, JR., being duly sworn on his oath, deposes and says:

1. That he is the District Director of the Internal Revenue Service, Chicago, Illinois, and a duly authorized delegate of the Secretary of the Treasury and the Commissioner of Internal Revenue.

2. That he has personal knowledge of the facts herein set forth.

3. That income tax deficiencies for the years 1949, 1950, and 1951 were assessed August 23, 1957 against Abraham Teitelbaum and Esther Melnick Teitelbaum as follows:

	1949	1950	1951
TAX	$30,172.46	$60,318.66	$139,544.99
PENALTY	—	$33,533.71	$90,704.24
INTEREST	$13,466.42	$23,302.00	$45,535.63
TOTAL	$43,638.88	$117,154.37	$275,784.86

4. That Notice and Demand for payment of these deficiencies were sent by ordinary mail to Abraham Teitelbaum and Esther M. Teitelbaum at 6911 Euclid Avenue, Chicago, Illinois on August 26, 1957. These notices contained a demand for the payment of the amounts shown thereon.

5. That the assessments against Esther M. Teitelbaum (only) were later abated because Esther M. Teitelbaum was determined never to have resided at

the Chicago address and, although a duplicate original of the Notice was later mailed to her actual residence in California, the sixty-day requirement for issuance of the statutory notice of deficiency was deemed not to have been met in her case;

6. That Notice of Federal Tax Lien covering the 1949, 1950, and 1951 deficiency assessments against Abraham Teitelbaum and Esther Melnick Teitelbaum were filed as follows:

(A) Document # 16997602 on August 28, 1957 with the Recorder of Deeds, Cook County, Chicago, Illinois;

(B) Document # 62796 on August 29, 1957 with the County Recorder of Riverside County, California;

(C) Document # 194896 on July 23, 1958 with County Recorder, Los Angeles County, California;

(D) Document Unnumbered on September 21, 1961 with the Clerk of Circuit Court, Dade County, Florida;

7. That the total amount now due on the deficiency assessments against Abraham Teitelbaum is as follows:

	Outstanding Assessment	Accrued Interest to 12/23/63	Total
1949	$28,820.92	$12,385.55	$41,206.47
1950	$86,995.04	$33,058.12	$120,053.16
1951	$261,720.71	$99,465.87	$361,186.58
			$522,446.21

Additional interest accrues at the daily rate of $62.06.

Further affiant sayeth not.

/s/ Eugene C. Coyle, Jr.
EUGENE C. COYLE, JR.

Subscribed and Sworn to Before me
this 3rd day of December A.D., 1963

/s/ [Illegible]
Notary Public

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